SAMI MOUSAWI UTAMA SDN BHD

v.

KERAJAAN NEGERI SARAWAK

COURT OF APPEAL, MALAYSIA
ABDUL HAMID MOHAMAD JCA
SAARI YUSOFF JCA
RAHMAH HUSSAIN JCA
[CIVIL APPEAL NO. Q-01-56-00]
20 JANUARY 2004

ARBITRATION: *Award - Setting aside - Error of law on the face of the award - Whether High Court justified in setting aside award*

ARBITRATION: *Arbitrator - Misconduct - Award of arbitrators totally against statutory provisions - Whether High Court justified in setting aside award*

ARBITRATION: *Award - Setting aside - Finding by High Court that arbitrators failed to analyse or completely ignored critical evidence - Whether tantamount to interference with findings of fact by arbitrators - Whether High Court justified in setting aside award*

The appellant, pursuant to a Consultancy Services Agreement ('CSA'), provided the Lembaga Amanah Kebajikan Mesjid Negeri Sarawak ('Lembaga') with comprehensive services for the design and supervision of the building of a new Sarawak State mosque. The CSA was novated by the Lembaga to the respondent – the Sarawak state government. The appellant was not however an architect, engineer or quantity surveyor as defined in the Architects Act 1967, Registration of Engineers Act 1967 and the Quantity Surveyors Act 1967 ('the relevant Acts'). The appellant had also not obtained from the relevant professional bodies a permit to provide professional services as architect, engineer or quantity surveyor. The respondent subsequently appointed a different consultant to undertake extension works to the State mosque. The appellant claimed for outstanding fees and fees it would have been entitled to had the respondent not allegedly breached the CSA by appointing the other consultant. The dispute was referred to arbitration. The three arbitrators, found as a preliminary issue on different grounds, that the appellant had a cause of action against the respondent in respect of its entitlement to fees and other remedies pursuant to the CSA. Two arbitrators found that there was no breach of ss. 7 and 7A of the relevant Acts whereas the third found that s. 39 of the relevant Acts saved the appellant. The respondent successfully applied to the High Court to set aside the award and the appellant thus appealed.

Held (dismissing the appeal with costs):
Per Rahmah Hussain JCA

[1] The trial judge in setting aside the arbitrator's award had not interfered with the findings of fact by the arbitrators. The trial judge correctly decided that the arbitrators failed to analyse or had completely ignored critical evidence when they held that the CSA did not require the appellant to practise or carry on business or take up employment as architects, engineers or quantity surveyors, since it was the appellant's own case that it was formed to undertake consultation work for the design and supervision of the project. (p 196 g-h)

[2] Section 7A of the relevant Acts clearly provides that only a body corporate which has a permit from the relevant governing professional bodies can recover in any court any fee, charge or remuneration for any professional advice or services. The prohibition against recovery of fees by an unregistered engineer, architect and quantity surveyor is further strengthened by the provisions of s. 34 of the Architects Act 1967 and s. 25 of the Engineers Act 1967 and the Quantity Surveyors Act 1967, which impose sanctions on those who breach this prohibition. Such an award by the arbitrators was clearly against the statutory provisions and the public policy which the enactment aimed to achieve, which is to regulate the professions involved and to protect the public from unqualified and unregistered engineers, architects or quantity surveyors. (pp 197 a-h & 198 a-b)

[3] The trial judge correctly interpreted s. 39 of the relevant Acts having regard to s. 127 of the Interpretation Acts 1948 and 1967. He was also right in holding that the arbitrators had proceeded on a statutory interpretation that the law did not countenance. (p 198 c-e)

*[**Bahasa Malaysia** Translation Of Headnotes*

Berdasarkan kepada satu Perjanjian Perkhidmatan Konsultansi ('CSA') perayu telah memberikan perkhidmatan yang komprehensif kepada Lembaga Amanah Kebajikan Masjid Negeri Sarawak ('Lembaga') bagi tujuan merekacipta dan menyelia pembinaan Masjid Negeri Sarawak yang baru. Lembaga kemudiannya telah menovasi CSA kepada responden ketiga, iaitu Kerajaan Negeri Sarawak. Perayu bagaimanapun bukanlah seorang arkitek, jurutera ataupun juruukur bahan sebagaimana yang ditafsir oleh Akta Arkitek 1967, Akta Pendaftaran Jurutera 1967 dan Akta Juruukur Bahan 1967 ('Akta-Akta relevan'). Selain itu perayu juga tidak diberi permit oleh badan-badan profesional yang berkaitan bagi membolehkannya membekalkan perkhidmatan profesional selaku arkitek,

jurutera atau juruukur bahan. Berikutan itu responden melantik satu konsultan yang lain bagi menyiapkan kerja-kerja tambahan pada Mesjid Negeri. Akibatnya perayu menuntut bayaran fee yang tertunggak serta bayaran-bayaran lain yang ia berhak sekiranya CSA tidak dilanggari melalui perlantikan konsultan yang lain, dan pertikaian yang berbangkit telah dirujuk kepada timbangtara. Ketiga-tiga penimbangtara mendapati atas isu awalan, dengan alasan-alasan yang berbeza, bahawa perayu mempunyai kausa tindakan terhadap responden berkaitan keberhakannya kepada fee dan lain-lain remedi di bawah CSA. Dua penimbangtara mendapati bahawa tidak berlaku pelanggaran ss. 7 dan 7A Akta-Akta relevan manakala penimbangtara ketiga mendapati bahawa s. 39 Akta-Akta relevan telah menyelamatkan perayu. Responden berjaya memohon kepada Mahkamah Tinggi untuk mengetepikan award dan perayu merayu.

Diputuskan (menolak rayuan dengan kos):
Oleh Rahmah Hussain HMR

[1] Hakim bicara tidak mengganggu dapatan fakta penimbangtara-penimbangtara apabila mengetepikan award penimbangtara. Hakim bicara dengan betulnya memutuskan bahawa penimbangtara-penimbangtara telah gagal menganalisa atau tidak mengendah langsung keterangan-keterangan penting bilamana memutuskan bahawa CSA tidak memerlukan perayu beramal atau berniaga atau bekerja sebagai arkitek, jurutera atau juruukur bahan disebabkan kes perayu adalah bahawa ia ditubuhkan untuk membuat kerja-kerja konsultan bagi tujuan merekacipta dan menyelia projek.

[2] Seksyen 7A Akta-Akta relevan jelas memperuntukkan bahawa hanya satu badan yang diperbadankan yang mempunyai permit dari badan-badan pengawal profesional boleh menuntut suatu fee, bayaran atau upah di mahkamah berkaitan sesuatu khidmat atau nasihat profesional. Penegahan sebarang tuntutan fee oleh jurutera, arkitek dan juruukur bahan yang tidak berdaftar telah diperkuat oleh s. 34 Akta Arkitek 1967, s. 25 Akta Jurutera 1967 dan Akta Juruukur Bahan 1967, dengan mengenakan sanksi terhadap mereka-mereka yang melanggar penegahan tersebut. Award yang dibuat oleh penimbangtara jelas bertentangan dengan peruntukan-peruntukan statutori serta kepentingan awam yang hendak dicapai oleh enakmen, iaitu untuk mengawalselia profesion-profesion yang berkaitan serta melindungi orang awam dari jurutera, arkitek dan juruukur bahan yang tidak berkelayakan dan tidak berdaftar.

[3] Hakim bicara telah mentafsir s.39 Akta-Akta relevan dengan betul setelah mengambil kira s. 127 Akta-Akta Pentafsiran. Beliau juga betul dalam memutuskan bahawa penimbangtara-penimbangtara telah membuat tafsiran statut yang tidak didokong oleh undang-undang.

Legislation referred to:
Architects Act 1967, ss. 34, 39
Interpretation Acts 1948 and 1967, s. 127
Quantity Suveyors Act 1967, s. 25

For the appellant - Ranjit Singh (Isa Aziz Ibrahim & Tony Ling Lee Tom); M/s HC Lee & Partners
For the respondent - JC Fong (Susan Gan)

[Appeal from High Court, Kuching; Originating Motions No: 25-04-2000-I]

Reported by AC Simon

JUDGMENT

Rahmah Hussain JCA:
The appeal before this court is against the decision of the learned High Court Judge in setting aside the arbitrators' award dated 22 February 2000.

The arbitration proceedings was instituted pursuant to an arbitration clause (cl. 6.03) of a Consultancy Services Agreement dated 26 October 1984 ("CSA") signed between the Lembaga Amanah Kebajikan Masjid Negeri Sarawak ("Lembaga") and Sami Mousawi-Utama Sendirian Berhad (appellant).

In the light of the pleadings filed by the parties in the arbitration proceedings and at the request of the parties thereto, the arbitrators directed that the following Preliminary Issue be tried, namely:

> Whether the Claimant (a body corporate) being not an "Architect", "Engineer" or "Quantity Surveyor", as defined in the Architects Act, 1967, Registration of Engineers Act, 1967 and Quantity Surveyors Act, 1967, (respectively) can having regard to ss. 7 and 7A of the said Acts, provide in Malaysia, the comprehensive architectural, engineering and quantity surveying consultancy services for the design and supervision of the construction, building and erection of the new State Mosque and related buildings which the Claimant is contractually obligated to provide under the Consultancy Services Agreement dated 26 October 1984. **In any event** whether the Claimant has a cause of action against the Respondent in respect of its entitlement to fees and other remedies pursuant to the Consultancy Services Agreement dated 26 October 1984 in the light of the provisions of the Architects Act, 1967, Registration of Engineers Act, 1967 and Quantity Surveyors Act, 1967" (hereinafter referred to as the "Preliminary Issue").

The three learned arbitrators, had on different grounds, answered the Preliminary Issue in the affirmative – with two arbitrators finding that there was no breach of s. 7 & 7A of the said Acts and one finding that s. 39 of the Acts saved the claimant (appellant).

Dissatisfied with the said decision the respondent (Government of Sarawak) applied to the High Court to set it aside.

The learned High Court judge in a lengthy and erudite judgment allowed the respondent's application. Hence this appeal before us.

Facts Of Case

On 5 July 1984 the British architectural firm called Sami Mousawi International ("SMI"), with Sami Mousawi as the principal, and the Malaysian architectural cum engineering firm called Perunding Utama ("PU"), with Abdullah Mohd. Noor as the principal, jointly wrote to the Amanah Kebajikan Mesjid Negeri Sarawak ("Lembaga") to propose the provision of comprehensive consultancy services for the design and supervision of a proposed new Sarawak State mosque. It was stated in the proposal:

(1) that SMI would prepare in the United Kingdom the architectural drawings from concept, schematic and outline design to actual tender drawings and specifications as well as the mechanical and engineering (M&E) report, layout, design and calculations; and

(2) that PU would assist in some of those works and, *inter alia*, prepared the civil work designs and drawings, cost estimates, structural drawings, M&E detail drawings and specifications and bills of quantities and PU would submit and seek approval of the building plans from all the relevant authorities.

It was also proposed that a legal entity would be formed to enter into the agreement with the Lembaga. The proposal was accepted by the Lembaga. The claimant (appellant) was formed and the Consultancy Services Agreement (CSA) was executed incorporating the proposal. The claimant and the two directors were not registered nor approved to practise the disciplines covered by the three Acts.

Therein the CSA, the claimant (appellant) described itself as "a group of Consulting Architects and Engineers of reputable standing and expertise and is able and capable to undertake and provide all the necessary services to effectively and satisfactorily perform and complete the design and supervision of the project" that is the comprehensive design and supervision of the Mesjid Negeri Sarawak ("the project").

The final design drawings for the State Mosque (the project) were submitted by Sami Mousawi (an unregistered architect) and Abdullah Mohd. Nor (an unregistered engineer) to Pengarah Kerja Raya. The CSA was novated by Lembaga to the Government of Sarawak *vide* a Novation Agreement dated 20 November 1984.

Findings Of The High Court

In a lengthy and erudite judgment, Ian HC Chan J had this to say: (at p. 71 Rekod Rayuan (Bahagian A & B), lines 5-9)

> The arbitrator had completely ignored the evidence, supra, that it was SMI and PU acting through SM and Abdullah Mohd Noor that had submitted plans for approval, that it was the Claimant that had submitted and claimed payment of professional fees.

He added: (at p. 71 – lines 11-14 at p. 72)

> These two persons together hold 100% of the equity of the claimant. Those evidence completely dispel any doubt SM and Abdullah Mohd Noor had practised the discipline of architect and engineer at a time they were not registered under the relevant Act. Those evidence show beyond doubt that these two persons, whether by themselves or with other professionals, will ultimately be the beneficiaries of the fees for professional services. That is the consequence of the CSA as formed or as performed. In this regard the arbitrator R. Talalla, Esq. was correct in his dissenting view that it was SMI and PU who performed the architectural services through the vehicle of a corporate identity in the name of the claimant. This learned arbitrator had correctly pointed out that this was in fact the position maintained by the claimant in their pleading in following words:
>
> > The claimant was, at all material times, a corporate vehicle for a joint venture between Messrs. Sami Mousawi International ("SMI") and Messrs. Perunding Utama ("PU"), purpose of which was to undertake the consultation work for the design and supervision of the Project.
>
> This fact makes the finding of the two arbitrators that the CSA does not require the claimant to practise or carry on business or take up employment as architects, engineers or quantity surveyors completely untenable since it was their own pleading and therefore their case that the claimant was formed 'to undertake the consultation work for the design and supervision of the Project'. That is a serious failure to analyse and appraise material and relevant evidence which, following the decision of Sharikat Pemborong Pertanian & Perumahan, justifies the setting aside of the award.

As to whether the claimant was entitled to claim for the professional fees the learned judge said:

> If SMI and PU or SM and Abdullah Mohd Noor had claimed for the professional fees they would not be entitled since they are not registered under the relevant Acts. Why, then, should the claimant be entitled to claim for the same fees under the name of the claimant when not only SMI and PU but SM and Abdullah Mohd Noor and the claimant were not registered to practice under the relevant Acts? That was the result of the decision of the two arbitrators when they sought to justify their decision by saying that the claimant was not performing but providing for the services. It is precisely that a corporate entity like the claimant cannot by themselves perform the services since such can only be performed by individuals that s. 7A was enacted to prevent the claimant from saying that they did not but someone else perform the services. If the argument of the two arbitrators can be upheld it would mean that a corporate entity need never apply for the approval to practise while allowing unregistered persons to practise under its umbrella. This would render s. 7A completely useless. Such a result should not be had and I had said so in *PP v Tan Kah* [1993] 1 CLJ 83, 84 since it rendered that piece of legislation completely useless. The award was therefore based on a principle of construction which the law does not countenance and thus, on this ground also and on the authority of *Ganda Edible Oils Sdn Bhd*, the award should be set aside.

The learned judge was also of the considered opinion that "the award ought also to be set aside on the ground that as a matter of public policy it should not be enforced for it infringed the three Acts or it at least defeat the objective of the three Acts. The authority for this proposition is *David Taylor & Son, Ltd v. Barnett.*

Turning to the decision of the other arbitrator R. Talalla Esq. who though he came to the decision that the CSA infringed the Acts, nevertheless answered the questions in the affirmative, because he felt that the CSA was saved by s. 39, the learned judge said:

> The arbitrator had also said that the CSA was impliedly acquiesced or tolerated by His Excellency the Yang DiPertua Negeri or the Government of the State of Sarawak which assuming that it is true, it does not prevent the Respondent from raising the defence of illegality (see *Sababumi (Sandakan) Sdn Bhd v. Datuk Yap Pak Leong* [1998] 3 MLJ 151, 173). His decision on this point was plainly against the authority and is an error in law which justifies the setting aside of the award (see *Ganda Edible Oils Sdn Bhd*).

As for his reliance on s. 39, I am again in agreement with the learned State Attorney-General that the arbitrator had misconstrued the same or proceeded on an interpretation which the law does not countenance. Section 39 merely restates what has already been generally provided by s. 127 of the Interpretation Act 1967 which says:

> No Act of Parliament, Ordinance or Enactment shall in any manner whatsoever affect the rights of the Yang di-Pertuan Agong or of the Government unless it is therein expressly provided, or unless it appears by necessary implication, that the Yang di-Pertuan Agong or the Government, as the case may be, is bound.

Section 39 also removes any implication that the State Government is bound. However, though it is not bound it does not mean that it cannot take advantage of the Acts (Bennion on Statutory Interpretation, 2nd edn., pp 317-318).

Memorandum Of Appeal

The appellant in his memorandum of appeal raised nine (9) grounds to show that the learned judge had erred in law and/or in fact in coming to the conclusions as stated in his judgment. For ease of reference, they are reproduced below as follows:

1. The learned judge had erred in law and/or in fact in coming to the conclusion that the learned arbitrators, Dato' VC George, Mr. Richard Talalla and the late Mr. S. Sahathevan had misconducted themselves in granting the award dated 28 February 2000 in favour of the appellant.

2. The learned judge had erred in fact and/or in law in holding that the learned arbitrators, had made an error in law on the face of the award in coming to the conclusion that the appellant was not practicing as the relevant professionals under the Architects Act 1967, Registration of Engineers Act 1967 and the Quantity Surveyors Act 1967.

3. The learned judge had erred in law by interfering with the findings of fact arrived at by the learned arbitrators in respect of the evidence adduced at the arbitration proceedings.

4. The learned judge had erred in fact and/or in law in coming to the conclusion that the learned arbitrators had misconducted themselves by misconstruing the evidence adduced in respect of the parties who made the submission of drawings and plans in respect of the State Mosque Project in particular to the letter dated 15 March 1985 written by Sami Mousawi International and Perunding Utama.

5. The learned judge had erred in law and/or in fact in coming to the conclusion that the learned arbitrators had misconducted themselves in failing to analyse and appraise the evidence as a whole adduced in respect of the parties who made the submission of drawings and plans in respect of the State Mosque Project.

6. The learned judge had erred in law and in fact in coming to the conclusion that the learned arbitrators had misconstrued the interpretation of s. 39 of the Architects Act 1967 and the corresponding provisions of the Registration of Engineers Act 1967 and the Quantity Surveyors Act 1967.

7. The learned judge had erred in law and in fact by holding that in view of the evidence adduced at the arbitration proceedings, s. 39 of the Architects Act 1967 and the Quantity Surveyors Act 1967 does not preclude the respondent from raising the defence of illegality in respect of the Consultancy Services Agreement.

8. The learned judge had erred in law by holding that the award ought to be set aside on the ground that the Consultancy Services Agreement should not be enforced on the ground of public policy for it infringed or defeated the objectives of the Architects Act 1967, the Registration of Engineers Act 1967 and the Quantity Surveyors Act 1967.

9. The learned judge had erred in law by failing to appreciate the role of the court in respect of applications to set aside arbitration awards, where the parties have agreed to abide by the decision of an arbitration tribunal of their own selection, being that the court must not be over ready to set aside awards unless there had been something radically wrong and vicious in the proceedings.

Submissions

A. By learned counsel for the appellant – Mr. Ranjit Singh

i) On Grounds 1, 2, 3 & 9

Mr. Ranjit Singh began his submission by stating the general principle of law, that a court may interfere with an award if there exists an error in law on the face of the award; but where a specific question of law arises from the material facts of the case, the court cannot (emphasis added) interfere with such a decision, even if erroneous. He said, in the present case, there was no error in law made by the majority of the arbitrators but what the learned judge did was to find errors of fact, which the learned judge was not entitled to do.

ii) On Grounds (4), (5) & (8)

It was submitted for the appellant that the learned judge in disturbing the findings of fact by the arbitrators, erroneously relied on the letter dated 15 March 1985. He said, the majority of the arbitrators found that the appellant did not practise as an Architect, Engineer or Quantity Surveyor as envisaged by the relevant Acts and that they came to such a finding after going through both oral and documentary evidence before them. He also said that the letter was consistent with the appellant's stand, that they were not registered, but that the respective persons practicing through whom they were claiming the consultancy fees were.

iii) On Grounds (6) & (7)

It was learned counsel's submission that the learned judge was wrong in coming to the conclusion that the learned arbitrator had misconstrued the interpretation of s. 39 of the relevant Acts and that s. 39 did not preclude the respondent from raising the defence of illegality in respect of the CSA.

B. By Sarawak State Attorney General – Datuk JC Fong

i) On Grounds (1), (2), (3) & (9)

It was Datuk JC Fong's submission that there are two grounds for setting aside the Interim Order of the arbitrators. Firstly, misconduct and secondly, an error in law on the face of the award. On misconduct, he argued that the learned judge had on the facts of the case, rightly found that the arbitrators had misconducted themselves by giving an award that was totally against statutory provisions and the public policy reflected therein. He said, the learned judge had also come to the right conclusion by referring to the pleadings that the appellant was formed to undertake consultancy work for the design and supervision of the project. On the error in law, on the face of the award, he said two of the arbitrators had failed to apply the principle that statutes should not be so construed as to make them completely useless and failed to give effect to the intention of Parliament.

ii) On Grounds (4), (5) & (8)

On these two grounds namely (4) & (5), the learned State Attorney General argued that the judge had not interfered with the findings of fact by the arbitrators. Instead, he said, the learned judge had correctly held that the arbitrators failed to analyse or had completely ignored critical evidence. Firstly, the letter dated 15 March 1985 which clearly showed that it was the appellant and P.U., acting through Sami Mousawi & Abdullah bin Mohd Noor, who submitted building plans to Jabatan Kerja Raya for approval. Secondly, there was also admission by Sami Mousawi that neither he, SMI nor the appellant was registered as Architect, Engineer or Quantity Surveyor in Malaysia. Lastly, the evidence of Abdullah bin Mohd. Noor, who said he was never a registered engineer.

On ground (8), Datuk JC Fong said that the appellant's claim is based on the CSA, which provided that the appellant was to be paid consultancy fees based on the statutory scales of fees for Architects, Engineers and Quantity Surveryors.

Finally it was Datuk JC Fong's submission that the arbitrator's award contains a manifest error in law on the face of the record, as by answering the Preliminary Issue in the affirmative, it means that the appellant not being an 'Architect', 'Engineer' or 'Quantity Surveyor' can provide comprehensive architectural, engineering and quantity surveying services.

iii) On Grounds (6) & (7)

Datuk JC Fong submitted that the judge had correctly interpreted s. 39 of the Acts having regard to s. 127 of the Interpretations Act and that the judge was right in holding that the arbitrators had proceeded on 'a statutory interpretation that the law does not countenance.'

Court's Findings

This is a case where a dispute arose because of a claim by the appellant for outstanding fees and more importantly, a claim for fees which the appellant would have been entitled to if the respondent had not allegedly breached the CSA in or about 1994, by appointing another consultant to undertake the extension to the state mosque. Arising from these claims, the issue whether the appellant could provide the consultancy services arose, as the appellant admittedly is not a registered Architect, Engineer or Quantity Surveyor and had not obtained from the relevant professional regulatory bodies a permit to provide professional services as Architect, Engineer or Quantity Surveyor and whether the appellant has any cause of action, based upon breach of contract, having regard to ss. 7 & 7A of all the three relevant Acts.

Having examined the arguments by both parties and given them our anxious consideration, it is our unanimous decision, that the learned judge in setting aside the arbitrators' award had not interfered with the findings of fact by the arbitrators. Instead, we are satisfied that he had come to the right conclusion when he said as follows: (at p. 72 of the Appeal Record – Part A & B)

> This fact makes the finding of the two arbitrators that the CSA does not require the claimant to practise or carry on business or take up employment as architects, engineers or quantity surveyors completely untenable since it was their own pleading and therefore their case that the claimant was formed 'to undertake the consultation work for the design and supervision of the Project'. That is a serious failure to analyse and appraise material and relevant evidence which, following the decision of Sharikat Pemborong Pertanian & Perumahan, justifies the setting aside of the award.

Section 7A of the relevant Acts of Parliament clearly provides that only a body corporate which has a permit from the relevant governing professional bodies can recover "in any court any fee, charge or remuneration for any professional advice or services."

Furthermore the prohibition against recovery of fees by an unregistered Engineer, Architect and Quantity Surveyor providing professional services and advice under ss. 7 and 7A is further strengthened by the provisions of s. 34 of the Architects Act 1967, and s. 25 of both the Registration of Engineers Act 1967 and the Quantity Surveyors Act 1967 which impose penal sanction on those who breached this prohibition. (See: B/A p. 14) s. 34 of the Architects Act 1967 provides:

> 34 (1) Any person who contravenes or fails to comply with any of the provisions of this Act or any rules made thereunder shall be guilty of an offence and where no penalty is expressly provided, shall, on conviction, be liable to a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding two years or to both.
>
> (2) If a body corporate contravenes or fails to comply with any of the provisions of this Act or any rules made thereunder, every director, manager, secretary or other similar officer thereof shall be guilty of the same offence and be liable to the same penalty as the body corporate is guilty of and liable to, unless he proves that the offence was committed without his knowledge, consent or connivance or was not attributable to any neglect on his part.

(Similar provisions are found in s. 25 of both the Quantity Surveyors Act 1967 and the Registration of Engineers Act 1967).

We are also in total agreement with the learned judge's finding on the decision of the two arbitrators – when they sought to justify their decision by saying that the claimant was not performing but providing (emphasis added) for the services. This is what the learned judge said: (at p. 72 Appeal Record – Part A & B)

> It is precisely that a corporate entity like the claimant cannot by themselves perform the services since such can only be performed by individuals that s. 7A was enacted to prevent the claimant from saying that they did not but someone else perform the services. If the argument of the two arbitrators can be upheld it would mean that a corporate entity need never apply for the approval to practise while allowing unregistered persons to practise under its umbrella. This would render s. 7A completely useless.

He added:

> The award was therefore based on a principle of construction which the law does not countenance and thus, on this ground also and on the authority of *Ganda Edible Oils Sdn Bhd,* the award should be set aside.

Further, we are also of the same view that such an award by the arbitrators is clearly against the statutory provisions and the public policy which the enactment of such laws aims to achieve, *ie* to regulate the professions involved and to protect the public from unqualified and unregistered Engineers, Architects or Quantity Surveyors.

As regards the decision of the other arbitrator, who though he came to the decision that the CSA infringed the Acts, nevertheless answered the questions in the affirmative because he felt the CSA was saved by s. 39, the learned judge said this: (at p. 74 of Appeal Record Part A & B)

> His decision on this point was plainly against the authority and is an error in law which justifies the setting aside of the award (see *Ganda Edible Oils Sdn Bhd*).

As to the learned arbitrator's reliance on s. 39, the learned judge had this to say:

> I am again in agreement with the learned State Attorney-General that the arbitrator had misconstrued the same and proceeded on an interpretation which the law does not countenance. Section 39 merely restates what has already been generally provided by s. 127 of the Interpretation Act 1967 ...

Conclusion

For the reasons discussed above, we dismissed the appeal with costs and ordered that the deposit be paid to the respondents.

Our decision was delivered on 9 May 2003 and in the meantime one member of the panel, Mohd. Saari bin Yusoff JCA had since retired. The other member of the panel, Abdul Hamid bin Haji Mohamad JCA has read this judgment in draft and has expressed his agreement with the same.